

## REMARKS

Applicants respectfully request further examination and reconsideration in view of the instant response. Claims 1 and 3-24 remain pending in the case. Claims 1 and 3-24 are rejected.

### 37 CFR 1.105

The Office Action states at the first paragraph on page 2, "Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application."

37 CFR 1.105(a)(3) states, "Any reply that states that the information required to be submitted is unknown and/or is not readily available to the party or parties from which it was requested will be acceptable as a complete reply."

The Office Action states starting in the second to last sentence on page 2, "In response to this requirement, please provide the citation and a copy of each publication which any of the applicants authored or co-authored and which describe the disclosed subject matter of sales forecasting or information aggregation or information markets." Applicants respectfully state that this information is unknown or is not readily available to Applicants.

The Office Action states in the first paragraph on page 3, "In response to this requirement, please provide the citation and copy of each publication that is a source used for the description of the prior art in the disclosure. For each publication, please provide a concise explanation of that publication's contribution to the description of the prior art." Applicants respectfully state that this information is unknown or is not readily available to Applicants.

The Office Action states in the second paragraph on page 3, "In response to this requirement, please provide the citation and a copy of each publication that any of the applicants relied upon to develop the disclosed subject matter that describes the applicant's invention, particular as to developing (information markets, finance forecasting, information aggregation). For each publication, please provide a concise explanation of the reliance

placed on that publication in the development of the disclosed subject matter.” Applicants respectfully state that this information is unknown or is not readily available to Applicants.

The Office Action states in the third paragraph on page 3, “In response to this requirement, please provide the citation and a copy of each publication that any of the applicants relied upon to draft the claimed subject matter. For each publication, please provide a concise explanation of the reliance placed on that publication in distinguishing the claimed subject matter from the prior art.” Applicants respectfully state that this information is unknown or is not readily available to Applicants.

The Office Action states in the last paragraph on page 3, “In response to this requirement, please provide the names of any products or services that have incorporated the claimed subject matter.” Applicants respectfully state that this information is unknown or is not readily available to Applicants.

The Office Action states in the first paragraph on page 4, “In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter indicated in the requirement, or where such subject matter is not indicated, the subject matter found in applicant’s disclosure.” Applicants respectfully state that this information is unknown or is not readily available to Applicants.

The Office Action referred to “Information Aggregation Mechanisms: Concept, Design, and Implementation For A Sales Forecasting Problem” by Plott et al. dated 2002 (referred to herein as “Plott-IAM”) and “Markets as Information Gathering Tools” by Plott dated 2000 (referred to herein as “Plott-MIG”) in the Requirement for Information under 37 CFR 1.105 on page 2. Although, the Office Action did not assert that either Plott-AIM or Plott-MIG suggested the embodiments recited by the instant Application’s claims, for the sake of thoroughness, Applicants will discuss why Applicants understand Kaplan and Sarin to teach away from Plott-MIG and Plott-AIM.

### RESPONSE TO ARGUMENTS

The Response to Arguments refers to Kaplan and Sarin on page 7. Applicants respectfully submit that there is no motivation to combine Kaplan and Sarin because Kaplan and Sarin teach away from each other, for reasons discussed hereinafter.

The Response to Arguments refers to Plott-IAM and Plott-MIG on page 8. Although, the Office Action did not assert that either Plott-AIM or Plott-MIG suggested the embodiments recited by the instant Application's claims, for the sake of thoroughness, Applicants will discuss why Applicants understand Kaplan and Sarin to teach away from Plott-MIG and Plott-AIM.

### IMPROPER OFFICIAL NOTICE

The Office Action took Official notice in the first paragraph on page 15 that "exponential factoring is an old and well known mathematical/statistical technique, method and/or approach. Common exponential factoring in forecasting include exponential weighted averaging, exponential smoothing factors, MACD (exponential) and the like."

Applicants respectfully disagree with the aforementioned assertion regarding the embodiments as recited in Claims 1, 3-6, 8-14 and 17-23. As such, Applicants respectfully request that the Examiner produce authority for this assertion in conjunction with the embodiments as recited in Claims 1, 3-6, 8-14 and 17-23 for at least the following rationale.

Applicants respectfully submit that the Examiner has provided inadequate support of a finding of Official Notice. As stated in MPEP § 2144.03(A):

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.

See *id.* (emphasis added), *citing* *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. Indeed, "[i]t is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." See *id.*, *citing* *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach

conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.”) (emphasis added).

With respect to the embodiments as recited in Claims 1, 3-6, 8-14 and 17-23, Applicants respectfully submit that the basis for the Official Notice, as relied upon in the instant Office Action, is not supported by sufficient evidence of record, as required. Accordingly, Applicants respectfully request that the Examiner provide adequate evidence in support of the finding of Official Notice, in accordance with 37 C.F.R. § 104(c)(2) or (d)(2).

### 35 U.S.C. 130

In paragraph 5 on page 9, the Office Action states that Claims 1, 3-6, 8-14 and 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,155,510 by Kaplan (referred to hereinafter as “Kaplan”) in view of “Approach for Long Term Forecasting with an Application to Solar Electric Energy” by Sarin dated 1979 (referred to hereinafter as “Sarin”).

### KAPLAN

This section describes Applicants’ understanding of what Kaplan teaches. Referring to Kaplan’s title, Applicants’ understand Kaplan to forecasting information using collective intelligence from diverse sources. Kaplan states at Col. 1 lines 27-33 with regards to conventional methods, “Many of these models are tuned and validated against actual past historical data, and then are used to try and predict future data or behavior. Unfortunately, no known model of this type has worked sufficiently well to overturn the general opinion that the stock market cannot be predicted with any useful degree of accuracy” (emphasis added).

Kaplan further states with regards to conventional methods at Col. 1 lines 60-65,

Other websites and models and methods are associated with such websites have expert analysts on staff who sort through the information generated by the masses, and try to find nuggets that help drive investment decisions... Both web-based approaches rely on conventional wisdom, which says that individual experts... but not ordinary non-expert investors are the key to making good investment decisions” (emphasis added).

Kaplan states, that one of the conventional doctrines is “...even if people did not know anything about the stock market, they would not share it with others, and possibly would rather put false information into the system in order to manipulate the system’s predictions to their own financial advantage....Empirical evidence based on initial prototype testing suggests that these supposed problems do not exist or at least do not exist to the detriment of the inventive system and method” (emphasis added).

Kaplan states at Col. 4 lines 63-65, “Key components of the invention include a means for gathering individual forecasts from a plurality of individuals or other entities within a defined period of time.”

Therefore, Applicants understand Kaplan to gather forecasts from a plurality of individuals that include ordinary non-experts instead of relying on expert analysts. Applicants understand Kaplan to teach using forecasts instead of historical data and to teach using ordinary non-experts instead of experts. Further, based on Kaplan’s statements at Col. 1 lines 27-33 and Col. 1 lines 60-65, Applicants understand Kaplan to teach away from using past historical data and experts. Further, since Kaplan states that empirical evidence from a prototype indicates that the conventional doctrine that “people will not share” is not a problem and since Kaplan teaches having individuals provide their own forecasts, Applicants understand Kaplan to teach away from “information that is privately held by individuals.”

## SARIN

This section describes Applicants’ understanding of what Sarin teaches. Sarin states in the abstract,

An approach is proposed that is useful for long term forecasting of market penetration of new technologies, fuel price and availability, business performance, etc. The central idea is to systematically solicit experts’ opinion in the form of subjective probability distributions in making future projections...” (emphasis added).

Since Sarin states that the central idea is to solicit experts’ opinion, Applicants understand Sarin to require experts’ to provide their opinions in order to forecast market penetration of new technologies.

## PLOT-MARKETS AS INFORMATION GATHERING

The Office Action asserts that “Markets as Information Gathering Tools” by Plott dated 2000 (referred to herein after as “Plott-MIG”), demonstrates that “providing probability forecasts for various possible/expected outcomes, e.g., probability bins, buckets, classes, ranges of expected outcomes, rain/no rain) is old and very well known” on the second paragraph of page 10. Although, the Office Action did not assert that Plott-MIG suggested the embodiments recited by the instant Application’s claims, for the sake of thoroughness, Applicants will describe Applicants’ understanding of what Plott-MIG teaches and why Applicants understand Plott-MIG to teach away from Kaplan and Sarin.

Plott-MIG teaches markets as information gathering tools. In the first paragraph, Plott-MIG discusses several examples of information, such as current movement in the stock market, movement of individual stock prices, orange juice futures, which can be used to anticipate events, such as change in interest rates, earnings reports, and future weather in the south. Plott-MIG states in the second paragraph on page 2, “...there is a need to pause and ask ourselves what it means for markets to have such capabilities. First, it means that markets can find the solution to a complex set of equations that are part of the knowledge of no one. Second, it means that while finding this solution, it can collect information that is dispersed across the economy, aggregate it like a statistician, and publish the findings in the form of prices.”

Plott-MIG states in the last 5 lines on page 2, “Thus, the information about the equations is not in one head but there is even more information that must be collected. Each individual has private information about the world around him. Expectations based on this private information are sufficient for decisions so long as such expectations are not inconsistent with other information reflected in the behavior of the economy, such as prices” (emphasis added). Plott-MIG states at lines 2-11 on page 3, “Equilibration will not occur until all information is comfortably incorporated into the public observable variables...One the surface, the idea that markets can perform such aggregation seems to be false. It seems to be beyond human capacities. One is tempted to dismiss the theory immediately, without further thought.

However, such dismissal would be premature. The capacities to infer underlying information from the behavior of others is so commonplace that we hardly notice the complex process that is taking place..." (emphasis added).

Starting at the second paragraph on page 11, Plott-MIG states,

The experiments proceed in a series of independent periods, and before each period the subjects are given private information about the state in the upcoming period. No communication or sharing of private information is allowed. Trading takes place in the context of much individual uncertainty as each person gets very little information...Thus, even though each individual had very little information, the "market," consisting of the aggregate of about 270 observations, three from each of 90 people, had a great deal of information. In other words, the market "knew" the state with near certainty...According to the information aggregate hypothesis of rational expectations, the prices should reflect all available information..." (emphasis added).

Plott-MIG states starting at the first sentence of section 3 on page 12, "If markets have the power to collect and to aggregate information, then harnessing that power could be valuable...It feels that the best information regarding the state of the market resides dispersed as opinions, hunches, and beliefs in its sales force...." (emphasis added). As a part of an experiment described in section 3, Plott-MIG states starting at the last paragraph on page 12 for section 3 to the last sentence of section 3 on page 13, "Each person was allowed to participate was given an endowment of approximately 20 shares in each of the markets. The markets were open for several days, during which participants could buy and sell shares reflecting their beliefs...All indications are that this type of mechanism works in practice."

Plott-MIG states in the last 4 sentences on page 13, "Experiments tell us that the ability of markets to perform the task of information aggregation is closely related to the dynamics that take place in market adjustments. Further, that dynamic is itself closely related to the way that markets are organized and the instruments that exist in the markets for trading..."

Therefore, Applicants understand Plott-MIG to teach that past historical information, such as prices that people buy and sell, reflects information, such as opinions, hunches, and beliefs, which is privately held by individuals. Applicants understand Plott-MIG to teach that an aggregation of gathered information, such as prices that people buy and sell items, is “is closely related to the dynamics that take place in a market adjustments. Further, that dynamic is itself closely related to the way that markets are organized and the instruments that exist in the markets for trading...”

#### PLOT-INFORMATION AGGREGATION MECHANISMS

The Office Action asserts that “Information Aggregation Mechanisms: Concept, Design, and Implementation For A Sales Forecasting Problem” by Plott dated 2002 (referred to herein after as “Plott-IAM”), demonstrates that “providing probability forecasts for various possible/expected outcomes, e.g., probability bins, buckets, classes, ranges of expected outcomes, rain/no rain) is old and very well known” on the second paragraph of page 10. Although, the Office Action did not assert that Plott-IAM suggested the embodiments recited by the instant Application’s claims, for the sake of thoroughness, Applicants will describe Applicants’ understanding of what Plott-IAM teaches and why Applicants understand Plott-IAM to teach away from Kaplan and Sarin.

Plott-IAM states in the last sentence on page 2, “This paper takes the methodologies of experimental economics one step further and reports on the implementation and use of market processes that were designed explicitly for the purpose of performing the task of accumulating and organizing information that is held in a widely dispersed and subjective form” (emphasis added).

Plott-IAM states in the first sentence of the last paragraph on page 2, “Economists have long understood that, in theory, the prices in properly designed markets reflect the collection of all the information possessed by all the traders about future events” (emphasis added).

Plott-IAM states at lines 13-21 of the second paragraph on page 3,

In a perfect world, with unlimited time and resources, a user of such information could personally interview everyone that might have a relevant insight but such luxury does not exist. Gathering the bits and pieces by traditional means, such as business meetings, is highly inefficient because of a host of practical problems related to location, incentives, the insignificant amounts of information in any one place, and even the absence of a methodology for gathering it. Further, business practices such as quotas and budgeting settings create incentives for individuals not to reveal their information..." (emphasis added).

Therefore, Applicants understand Plott-IAM to teach accumulating and organizing information that is held in a widely dispersed and subjective form and to teach away from individuals revealing information that is private to them.

#### NO MOTIVATION TO COMBINE

Applicants respectfully submit that “[i]t is improper to combine references where the references teach away from their combination” (emphasis added; MPEP 2145(X)(D)(2); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)). Applicants respectfully note that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention” (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)). Applicants respectfully submit that there is no motivation to combine the teachings of Kaplan, Sarin, Plott-MIG, and Plott-AIM, because various combinations of Kaplan, Sarin, Plott-MIG, and Plott-AIM teach away from each other. More specifically, Applicants understand Kaplan and Sarin to teach away from each other. Further, Applicants understand Kaplan and Sarin to teach away from Plott-AIM and Plott-MIG. Further, Applicants understand Plott-AIM and Plott-MIG to teach away from both Kaplan and Sarin.

As discussed herein, Applicants understand Kaplan to teach away from using experts whereas Sarin requires experts. Therefore, Applicants understand Kaplan and Sarin to teach away from each other.

As discussed herein, Applicants understand Kaplan to teach away from using past historical information and information that is privately held by individuals. In contrast, Plott-MIG teaches past historical information and information that is privately held by individuals. Therefore, Applicants understand Kaplan and Plott-MIG to teach away from each other.

As discussed herein, Applicants understand Plott-IAM to teach away from individuals revealing information that is private to them because they would have no incentive to do so. In contrast, Kaplan teaches that the conventional wisdom that individuals would not share their information is incorrect. Therefore, Kaplan and Plott-IAM teach away from each other.

As discussed herein, Applicants understand Kaplan to teach receiving forecasts from a plurality of individuals. Therefore, Applicants understand Kaplan to inherently teach a central location, such as web site, that a plurality of individuals can enter their forecasts. In contrast to individuals taking the initiative to enter their forecasts into a central location, Plott-IAM teaches accumulating and organizing information that is held in a widely dispersed and subject form.

As discussed herein, Applicants understand Sarin to require that experts provide their opinions in a form. In contrast, Plott-MIG teaches using past historical information that reflects privately held information about individuals. Sarin requires providing information. Plott-MIG teaches “privately held information.” Sarin requires “experts.” Plott-MIG teaches “individuals.” Therefore, Applicants understand Sarin and Plott-MIG to teach away from each other.

Sarin requires “experts” to provide their opinions. Plott-IAM teaches that there is no incentive for individuals to share their information. For at least this reason, Sarin and Plott-IAM teach away from each other.

Therefore, Applicants understand various combinations of the asserted art, Kaplan, Sarin, Plott-IAM and Plott-MIG, to teach away from each other.

#### SUMMARY

Because Applicants understand various combinations of the asserted art to teach away from each other, Applicants respectfully submit that the embodiments recited by the instant applications, serial no. 10/797,785, claims are patentable.

CONCLUSION

Based on the arguments presented above, Applicants respectfully assert that Claims 1-26 overcome the rejections of record and, therefore, Applicants respectfully solicit allowance of these Claims.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

WAGNER BLECHER LLP

Dated: August 21, 2009

/John P. Wagner, Jr./

John P. Wagner Jr.  
Registration No. 35,398

Address: Westridge Business Park  
123 Westridge Drive  
Watsonville, California 95076 USA

Telephone: (408) 377-0500 Voice  
(408) 234-3649 Direct/Cell  
(831) 722-2350 Facsimile